IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 815 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
CHAUDHARY SHANKARBHAI JESANGBHAI & 2 - Opponent(s)

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Appearance :
Mr.S.P.Hasurkar, APP for Appellant(s) : 1,
MR RC JANI for Opponent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. By way of this appeal, the appellant – State challenges the judgment and order passed by learned Jt.Judicial Magistrate, First Class, Visnagar, in Criminal Case No.1165 of 1989 dated 20.5.1996, whereby the respondents were acquitted of the offences alleged under Sections 447, 323, 324, 325, 504, 506(2) and 114 of Indian Penal Code against

them.

2. The prosecution case, in short, was that the complainant Shankarbhai Ganeshbhai Chaudhary filed the complaint on 26.6.1989 alleging that the respondents – accused have attacked on the complainant and witnesses and caused serious injuries. It is also alleged that the accused have abused the filthy language and administered threat to be done to death. After completion of investigation, the charge sheet came to be filed against the accused under Sections 447, 323, 324, 325, 504, 506(2) and 114 of Indian Penal Code.

3. To prove the case against the accused, the prosecution examined in all eleven witnesses – P.W. 1 Shankarbhai Ganeshbhai Chaudhary Exh.20, P.W.2 Sagrambhai Ganeshbhai Chaudhary Exh.33, P.W. 3 Nanjibhai Khodidas Chaudhary Exh.34, P.W. 4 Shakuntalaben A Joshi Exh.38, P.W.5 Somabhai Ganeshbhai Chaudhary Exh.46, P.W.6 Hiraben Ganeshji Exh.47, P.W.7 Kuberbhai Dalsangbhai Chaudhary Exh.58, P.W.8 Ganeshbhai Mahadevbhai Chaudhary Exh.65, P.W.9 Ramjibhai Mahavevbhai Exh.67, P.W.20 Jayantilal Punjiram Exh.68, P.W.11 Prakashbhai Mohanbhai Maliya Exh.71. After recording necessary evidence, learned Magistrate acquitted the respondents of the offences with which they were charged. Hence, the present appeal.

4. Mr. S.P. Hasurkar, learned APP, appearing

for the appellant submitted that the accused have attacked armed with the weapons like spade and sticks and they have beaten the complainant and the witnesses and thereby they have committed the offence under Sections 447, 323, 324, 325, 504, 506(2) and 114 of Indian Penal Code. It is submitted by Mr.Hasurkar that without considering the evidence on record, the trial court has acquitted the accused. Thus, it is submitted that the impugned order is illegal and requires to be quashed and set aside.

5. Learned Advocate for the respondents submitted that there are several contradictions in the deposition of three eye witnesses and there are no specific evidence on record that particular injury was caused by the present respondents and rightly the trial Court has acquitted the present accused. It is further submitted that the order of the trial Court is perfectly just and proper which does not require any interference by this Court.

6. Having heard the learned advocates for the parties and having perused the record, it appears that the trial Court has appreciated the evidence and has come to the conclusion that there are contradictions in the depositions of three witnesses and there is no specific evidence on record as to who has caused the particular injury to the complainant and witnesses. In that view of the matter, I am of the considered opinion that the trial Court has rightly come to the conclusion that there is no

evidence on record to get the connection of injuries to the injured persons which are allegedly caused by the present respondents.

7. The scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a

> just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

8.1. Further, there is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record.

8.2. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> “... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

9. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed.

[K.S. JHAVERI, J.]

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